

# State of South Dakota

## SEVENTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2000

400D0787

### HOUSE ENGROSSED NO. **SB197** - 2/22/00

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a statewide underground tank cleanup program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 There is hereby created within the petroleum release compensation fund, a new program to  
6 be known as the abandoned tank removal program. Under this program, the director may  
7 provide payments for tank pulling and corrective action at abandoned sites where the owner or  
8 the person having legal custody of an abandoned site has voluntarily requested such action in the  
9 manner and time established by the secretaries of the departments of transportation and  
10 environment and natural resources and if the following criteria are met:

11 (1) The owner or person having legal custody of the abandoned site has submitted to the  
12 director a written request to have the tank removed. The request shall be made in the  
13 manner established by the secretary of the Department of Transportation to include  
14 documentation of eligibility for the site to participate in the abandoned tank removal  
15 program, proof of ownership, and legal description;

16 (2) The owner or person having legal custody of the abandoned site has, in writing,  
17 waived all claims against the state, its officers, agents, and employees for damages

1 resulting directly or indirectly from the tank pulling or corrective action;

2 (3) If the abandoned site is on private property, all property taxes are current; and

3 (4) The owner or person having legal custody of the abandoned site has agreed to transfer  
4 ownership of the removed tank and its contents to the state.

5 No tank is eligible for coverage under this program if the tank is located at the site of a  
6 commercially operational motor fuel vendor in service on or after April 1, 1988. However, the  
7 secretary of environment and natural resources may provide coverage to any owner or person  
8 under the program provided by this Act, if the owner or person having legal custody of a site,  
9 upon a determination by the Department of Environment and Natural Resources, is not  
10 financially able to participate in the petroleum release compensation program and the site is or  
11 has been in service since April 1, 1988.

12 Section 2. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 Payments made from the director for tank pulling and corrective action under the abandoned  
15 tank removal program may include:

16 (1) Tank pulling, as defined in this chapter, including the disposal of tank contents and  
17 specifically excluding the replacement of surface above the backfill area; and

18 (2) Removal of abandoned waste oil tanks and corrective action of a waste oil release  
19 located on an abandoned site.

20 Section 3. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 The owner or person having legal custody of the abandoned site shall, as a condition of  
23 approval for participation in the abandoned tank removal program, execute a legally binding five-  
24 year lien running with the affected property providing that any compensation received by the  
25 owner, the owner's heirs, successors in interest, or assigns, for transfer of any interest in or part

1 of the site, shall be paid to the secretary of the Department of Transportation and deposited in  
2 the fund. No lien may be for an amount more than ten thousand dollars or the cost of tank pulling  
3 and corrective action identified in the lien by the director, whichever is less. Any lien provided  
4 by this section is valid for five years from the date of recordation and the priority of the lien is  
5 established as of the date it is recorded in the office of the register of deeds of the county in  
6 which the site is located.

7 Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The Department of Environment and Natural Resources shall be responsible for the tank  
10 removal and corrective actions subject to this Act. The department may contract directly with  
11 consultants, contractors, other service providers, state agencies, subdivisions of government,  
12 counties, cities, townships, and tribes to carry out the provisions of this Act. After receiving  
13 itemized documentation of all actual costs from the department, the director of the petroleum  
14 release compensation fund shall make payment within thirty days of receipt. All tank removals,  
15 pollution assessments, and corrective actions taken under this Act shall comply with chapters  
16 34A-2 and 34A-12 and the rules promulgated thereunder.

17 Section 5. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The secretaries of the departments of transportation and environment and natural resources  
20 may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary  
21 to carry out the provisions of the abandoned tank removal program including the form and  
22 procedure for application for qualifying for tank pulling and corrective action.

23 Section 6. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 Except at sites determined to be high risk by the secretary of the Department of Environment

1 and Natural Resources using risk-based corrective action criteria, the director shall suspend  
2 payments for tank pulling and corrective action at abandoned sites eligible for the abandoned  
3 tank removal program if the balance of the fund is five million dollars or below. The director  
4 shall resume payments for tank pulling and corrective action at abandoned sites eligible for the  
5 abandoned tank removal program if the fund balance exceeds five million dollars. Except as  
6 provided in this Act, all other limits of coverage, conditions, and criteria in this chapter apply to  
7 tank pulling and corrective action taken at abandoned sites.

1    **BILL HISTORY**

2    1/24/00 First read in Senate and referred to State Affairs. S.J. 169

3    1/31/00 Scheduled for Committee hearing on this date.

4    2/2/00 Scheduled for Committee hearing on this date.

5    2/2/00 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 279

6    2/4/00 Senate Deferred to another day. S.J. 322

7    2/7/00 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 335

8    2/8/00 First read in House and referred to Transportation. H.J. 512

9    2/16/00 Scheduled for Committee hearing on this date.

10   2/16/00 Transportation Do Pass, Passed, AYES 11, NAYS 1. H.J. 703

11   2/17/00 House of Representatives Deferred to another day. H.J. 732

12   2/18/00 House of Representatives Deferred to another day. H.J. 764